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## Proposed Regulation Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) citation</b>	22 VAC 40-25
<b>Regulation title</b>	Auxiliary Grants Program
<b>Action title</b>	Clarify Reimbursement Procedures
<b>Document preparation date</b>	August 18, 2004

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://www.townhall.state.va.us/dpbpages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)), and the *Virginia Register Form, Style and Procedure Manual* ([http://legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Brief summary

*In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.*

This regulatory action updates terminology and establishes guidelines and expectations relative to (1) the requirements to participate in the Auxiliary Grants program, (2) minimum services to be provided, and (3) establishment of reimbursable rates and reporting requirements. Changes include: only the recipient or representative is authorized to cash or deposit the Auxiliary Grant payment; providers must submit an annual audit report instead of the current annual cost report; and providers are prohibited from charging additional fees to recipients. The term “adult care residence” is replaced with “adult living facility.”

## Basis

*Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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Federal authority is found in Title XX of the Code of Federal Regulations, Section 416.2001. The State statute providing the mandate for this regulation is found in the *Code of Virginia*, § 63.2-217 and § 63.2-800.

## Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.*

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The amendment to this regulation is necessary to bring it into compliance with the *Code of Virginia* and to provide guidelines to protect the health, safety, or welfare of vulnerable adults who meet the criteria for the Auxiliary Grants program.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)*

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The major changes include language changes to bring the regulation into compliance with current *Code of Virginia*, updating of terminology to provide consistency with other Department regulations, and the addition of requirements for an annual audit report and a provider agreement for assisted living facilities. In addition, *Code of Virginia* references are updated in response to October 2002's recodification of the Social Services section of the *Code* where § 63.1 was repealed and replaced with § 63.2.

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.*

The advantage to making these changes is to bring the regulation into compliance with previously promulgated changes. This helps to ensure that Auxiliary Grants services are provided in a consistent manner across the state in the 120 local departments of social services. There are no disadvantages to the public and Commonwealth.

**Economic impact**

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>	In FY 04, \$24 million was spent by the local departments of social services (LDSS) for Auxiliary Grants. This includes 80 percent funding from the State General Fund and 20 percent funding from the LDSS. The LDSS match was approximately \$4.8 million.
<b>Projected cost of the regulation on localities</b>	No additional costs are projected.
<b>Description of the individuals, businesses, or other entities likely to be affected by the regulation</b>	Persons aged 65 and over or adults aged 18 and over who have a disability and are on SSI or would be on SSI except for excess income are protected by this regulation. Assisted living facilities and adult foster care providers receive funds from Auxiliary Grant recipients.
<b>Agency’s best estimate of the number of such entities that will be affected</b>	As of February, 2004 there were 641 licensed assisted living facilities with 35,016 beds. In fiscal year 2004, approximately 6,367 recipients per month received Auxiliary Grant funds. In addition, approximately 16 recipients resided in adult foster care homes.
<b>Projected cost of the regulation for affected individuals, businesses, or other entities</b>	Providers that do not currently perform annual audits will have an additional cost of the audit. Due to tax consequences and best practices the facilities should already be preparing these audits. The due date is consistent with the tax filing deadline. Since this is a new requirement it is unknown as to how many ALF facilities do not currently perform these audits. The cost of the audit can vary from a few hundred dollars to several hundred dollars depending on the size and scope of the facility and the geographic area. Any additional cost will normally be offset by the elimination of the requirement for the submittal of a cost report.

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

This regulation was developed with the assistance of representatives of DSS Divisions of Finance and Benefit Programs, DSS Family Services Specialists, and other staff that have a working knowledge and expertise in Auxiliary Grants administration. Adult Services' philosophy is that the least restrictive guidelines in administering the Auxiliary Grants program is the most appropriate for the recipients. No other alternatives have been considered.

**Public comment**

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

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No public comments were received during the 30-day period following the publication of the NOIRA.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability.*

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Appropriate services are provided to the recipients who meet the program criteria to ensure that they are able to maintain a standard of living that meets a basic level of need. This regulation encourages self-sufficiency, self-pride, and the assumption of responsibility for vulnerable adults.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

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Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
22 VAC 40-25-10		“Adult foster/family care” is used.	Added the term and definition for “adult foster care” to comply with other policy and regulatory changes. Nationally, “adult foster care” is the accepted term for this type of care.
22 VAC 40-25-10		The terms “nonoperating expense” and “nonoperating revenue” are is used.	Changed the term “nonoperating” to “other,” with regard to assisted living facilities, to bring consistency to documents.
22 VAC 40-25-10			The term “personal representative” and the definition are added. The change is to bring consistency with other Department policies and regulations.
Throughout		The term “adult care residence” is used.	The term “adult care residence” is stricken and replaced with “assisted living facility.” The definition is expanded for consistency with the definition in the Division of Licensing Programs regulation.
Throughout			References to the <i>Code of Virginia</i> , § 63.1, are updated with the recodified <i>Code of Virginia</i> , § 63.2. The change complies with previous <i>Code</i> changes.
Throughout		The term “cost report” is used.	The term “cost report” is stricken and replaced with “annual audit report.” The change is to bring the regulation into compliance with the <i>Code of Virginia</i> , § 63.2-800 (C).
Throughout		The term “approved rate” is used.	The term “approved rate” is stricken and replaced with “established rate” and the definition is expanded. The change is to bring the regulation into compliance with current practice.
Throughout			The terms and definitions for “provider” and “provider agreement” are added to bring the regulation into compliance with other State agency regulations.

<p>22 VAC 40-25-20</p>		<p>Outdated terminology is used.</p>	<p>Updated terminology to provide consistency with definitions. Added prohibition of providers from charging the recipients additional costs or fees. This change has been implied in the current regulation and brings the regulation into compliance with other Department policies and current practice.</p>
<p>22 VAC 40-25-30</p>			<p>Added a reference from the Division of Licensing Programs regulation (22 VAC 40-71-10 et seq.) and expanded on the requirements for meals and snacks and care of funds.</p>
<p>22 VAC 40-25-40</p>			<p>Expanded on the requirements that 1) the personal needs allowance is for the recipient’s personal items, 2) the funds shall not be co-mingled with the facility’s funds, and 3) that the provider is prohibited from charging the recipient an additional cost for any services.</p>
	<p>22 VAC 40-25-45</p>		<p>Added the requirement and conditions for the provider to complete and submit a provider agreement to the Department at the time of application to be a licensed assisted living facility.</p>
<p>22 VAC 40-25-50</p>		<p>Outdated language is used.</p>	<p>Updated the language to be consistent with definitions. Added the term “adult foster care.” Updated the regulation to include the requirement to submit an “annual audit report” and Division of Finance requirements. Added wording to clarify the auxiliary grant rate calculation.</p>
<p>22 VAC 40-25-60</p>			<p>Added wording that the Auxiliary Grants payment is made payable to the recipient, and the recipient is obligated to pay the provider. Updated the regulation with the appropriate procedures to follow when a facility is sold, or closes and also if the recipient dies.</p>

22 VAC 40-25-70		There are no current requirements for an annual audit or audited cost report.	All financial information reported by an “assisted living facility” on the “annual audit report” shall be reconcilable to the provider’s general ledger or similar records. This change is to bring the regulation into compliance with Federal and state regulations.
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